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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 72

SHELLEY *vs.* KRAEMER

No. 87

MCGHEE *vs.* SIPES

No. 290

HURD *vs.* HODGE

No. 291

URCIOLO *vs.* HODGE

BRIEF OF AMERICAN VETERANS COMMITTEE (AVC), *Amicus Curiae*

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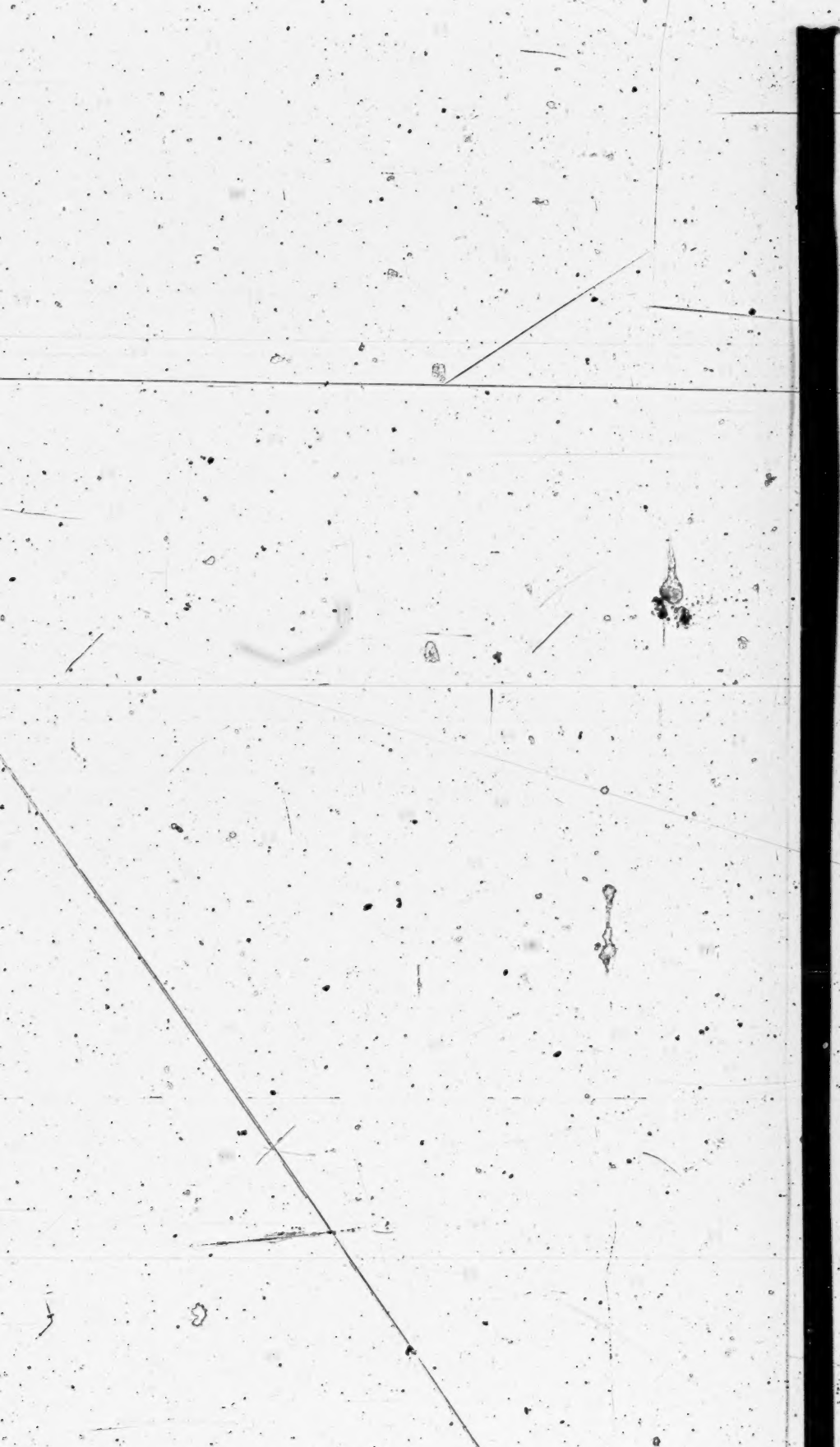

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Matter Involved

These four cases involve the enforcement by judicial action of racial restrictive covenants to prevent American citizens, solely on the basis of their race or color, from continuing to occupy the homes which they had purchased from willing sellers.

The Interest of the American Veterans Committee

The American Veterans Committee (AVC) is an organization of veterans of World War II who have associated themselves, regardless of national origin, creed or color, to

promote the basic aims for which they had fought during that War.[1] The judicial enforcement of racial restrictive covenants adversely affects those basic aims.[2]

This brief deals only with the impact of judicial enforcement of racial restrictive covenants on veterans, particularly on Negro veterans. AVC fully endorses, however, all the contentions which the petitioners in each of these cases urge against the judicial enforcement of racial restrictive covenants.

Summary of Argument

The public policy of the United States with respect to

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[1] AVC'S basic aims are set forth in the Preamble to the AVC Constitution adopted at its First National Convention at Des Moines, Iowa, June 14-16, 1946:

> "We as veterans of the Second World War associate ourselves regardless of national origin, creed or color for the following purposes:
> "To preserve the Constitution of the United States; To insure the rights of free speech, free press, free worship, free assembly and free elections; To provide thorough social and economic security to all; To maintain full production and full employment in our country under a system of private enterprise in which business, labor, agriculture and government cooperate; To promote peace and good will among all nations and all peoples; To support active participation of this nation in the United Nations and other world organizations whose purposes are to improve the cultural, commercial and social relations of all peoples; To provide such aid to disabled veterans as will enable them to maintain the position in society to which they are entitled; To provide such financial, medical, vocational and educational assistance to all veterans as is necessary for complete readjustment to civilian life; To resist and defeat all attempts to create strife between veterans and non-veterans; and To foster democracy. We dedicate ourselves to these aims, and for their attainment we establish this Constitution."

[2] The present platform adopted at the Second National AVC Convention in June, 1947, at Milwaukee, Wisconsin, includes planks against "restrictive real estate covenants that deny to veterans and others the right to live where they choose" (Planks 103, 150) and against the denial to any veteran, because of race, color or creed, of any of the benefits of the Servicemen's Readjustment Act of June 22, 1944 ("The G. I. Bill of Rights") cited in footnote 3 (Plank 171). *The AVC Bulletin*, AVC Platform Supplement, Vol. 2, No. 11, pp. 3, 4 (August, 1947) (national newspaper of AVC, New York).

the rehabilitation of World War II veterans in their housing, as expressed in Federal statutes, is non-discriminatory. Negro veterans are particularly in need of such rehabilitation, since their present housing is acutely inadequate. Racial restrictive covenants prevent them, solely on the basis of their race, from securing rehabilitation in their housing. The judicial enforcement of such covenants thus frustrates the statutes and policy of the United States. Hence, racial restrictive covenants should not be enforced by any court.

I. The Statutes of the United States With Respect to World War II Veterans and Their Housing Are Non-Discriminatory.

The Servicemen's Readjustment Act of June 22, 1944 (popularly known as the "G. I. Bill of Rights") facilitates the rehabilitation of World War II veterans in their housing by authorizing the Veterans Administration to guarantee up to 50 percent of $4,000 which such a veteran may borrow for the purchase, construction or improvement of a home.[3] This guarantee is, under the statute, available to "*any* person who shall have served in the active military or naval service of the United States" during the period from September 16, 1940 to July 25, 1947, and was discharged or released under conditions other than dishon-

[3] Act of June 22, 1944 (58 Stat. 284), as amended by the acts of June 30, 1945 (59 Stat. 265, 270); July 6, 1945 (59 Stat. 463); October 6, 1945 (59 Stat. 538, 542); December 28, 1945 (59 Stat. 623); June 22, 1946 (60 Stat. 299); August 8, 1946 (60 Stat. 932); 38 U. S. C., Supp. V, 693-697g; and as amended by the Act of July 25, 1947 (Public Law 239, 80th Cong., sec. 3, slip copy p. 6). The Selective Training and Service Act of September 16, 1940 (54 Stat. 885, 50 U. S. C., App., 304(a)), under which most World War II veterans were called from their homes to military service, provided that in the selection and training of men, and in the interpretation and execution of the Act, "there shall be no discrimination against any person on account of race or color."

orable.[4] The Veterans' Emergency Housing Act of May 22, 1946, expressly recognizing the "unprecedented emergency shortage of housing, particularly for veterans of World War II and their families," set up an allocations and priorities program to assure to all "veterans of World War II" a preference in purchasing or renting newly constructed housing.[5] The benefits of both of these acts are expressly available to "any" "veteran of World War II" who was not dishonorably discharged. Congress in these acts did not exclude Negro veterans from the benefits of these acts, and made no distinctions as to race, creed or color with respect to the veterans who could secure these benefits. The Congressional policy in this regard is clearly a non-discriminatory policy.

II. Negro Veterans Are Suffering Acute Housing Hardship

Negroes and white alike left their homes to fight in World War II. Both served with distinction in the armed forces of the United States all over the world.[6] Upon their return from the battlefields, many white and Negro veterans, having given up their housing to go to war, were immediately confronted with the need for housing. As Congress recognized in the Veterans' Emergency Housing Act of May 22, 1946, *supra*, the veteran, as a class, is more gravely in need of housing than the non-veteran who, as a class, generally was in a better position to retain his dwelling place during

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[4] Section 500(a) of the Servicemen's Readjustment Act of June 22, 1944, *supra*, footnote 3, as amended, 38 U. S. C., Supp. V, 694(a). (Emphasis supplied.)

[5] Act of May 22, 1946 (60 Stat. 207).

[6] *Army Service Forces Manual* M-5, "Leadership and the Negro Soldier" (October, 1944), pp. 9, 10, 23, 74-95; "To Secure These Rights," Report of the President's Committee on Civil Rights, pp. 83-84 (Govt. Printing Off., October 29, 1947). Before voluntary enlistments were stopped in World War II, Negroes had volunteered for military service in ratios far exceeding their ratio in the nation's population. *Army Service Forces Manual* M-5, *supra*, at p. 5. Inquiry from the Veterans Administration indicates that over 1,275,000 veterans of World War II are non-white.

the war years. This housing shortage has its greatest impact on Negro veterans.[7] Much less housing is available to them than to white veterans for rehabilitation to civilian life. The acute housing hardships of Negro veterans are shown by U. S. Census Bureau surveys of the housing conditions of World War II veterans, made from July 1946 through January 1947 in many cities throughout the nation.[8]

In the Washington, D. C. Metropolitan Area, for example, 42% of the married Negro veterans, compared to 9% of the married white veterans, were living in rented rooms, trailers or tourist cabins. Table 1 shows for a number of cities the differences between the proportion of white and Negro married veterans living in such inadequate accommodations:

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[7] In his message to the 14th Annual Convention of the National Association of Housing Officials, meeting in New York City on November 17, 1947, President Truman said: "Since the end of the war there has been an even greater need for adequate measures to clear slums and arrest and eliminate blight in our cities, to provide decent housing for . . . minority groups. . . ." *The Evening Star*, Washington, D. C., p. A-2 (November 17, 1947). See also Charles G. Bolte and Louis Harris, "Our Negro Veterans," pp. 8, 16-18, 29 (Public Affairs pamphlet No. 128) (March, 1947).

[8] U. S. Bureau of the Census, Surveys of World War II Veterans and Dwelling Unit Vacancy and Occupancy [in specified cities], Population: HVet series. See U. S. Census Bureau, "Summary Report of Veterans' Housing Surveys made from July, 1946, through January, 1947" (Population: HVet—No. 114, May 10, 1947). The Census data for the Washington, D. C. Metropolitan Area are from U. S. Bureau of the Census, "Survey of World War II Veterans and Dwelling Unit Vacancy and Occupancy in the Washington, D. C. Metropolitan District" (Population HVet—No. 84, February 4, 1947).

TABLE 1. PERCENTAGE OF MARRIED VETERANS OF WORLD WAR II LIVING IN RENTED ROOMS, TRAILERS OR TOURIST CABINS

	WHITE	NEGRO
Washington, D. C. Metropolitan District	9	42
Baltimore, Md.	7	21
Jackson, Miss.	26	37
Austin,, Texas	25	34
Shreveport Area, La.	22	32
East Central Los Angeles, Calif.	22	32*
Raleigh, N. Car.	21	34
Tampa and Port Tampa, Fla.**	20	46
Memphis Area, Tenn.	18	23
Houston Area, Texas.	11	25
New Orleans Area, La.	8	17
Jacksonville Area, Fla.	6	21

* These figures include Spanish-Americans, Japanese, and Chinese as well as Negroes.

** Non-seasonal residents only.

In addition, these Census Bureau surveys showed that Negro veterans living in all other types of dwellings ("ordinary dwelling units") were "doubled up" [9] in much greater proportion than white veterans. For example, in the Washington, D. C., Metropolitan Area 50% of the married Negro veterans occupying ordinary dwelling units had *at least* one other family living with them, whereas only 16% of married white veterans were so housed. Table 2 shows the racial differential of "doubled-up" families in a number of cities:

[9] For these surveys, the Census Bureau considered a veteran "as living doubled up if he lived in a dwelling unit which contained more than one family, that is, the unit contained in addition to the head of the household, married couples or married women with husbands absent." Under this definition, a single veteran, or a married veteran unaccompanied by his wife, could intrude himself into a dwelling unit occupied by another family and not be counted as "doubling up." Thus, the "doubling up" rates shown in Table 2 are understated.

TABLE 2. PERCENTAGE OF MARRIED VETERANS OF WORLD WAR II LIVING IN ORDINARY DWELLING UNITS WHO WERE LIVING "DOUBLED-UP"

	WHITE	NEGRO
Washington, D. C., Metropolitan District	16	50
Greensboro, N. C.	42	47
Birmingham Area, Ala.	35	46
Atlanta Area, Ga.	35	41
Baltimore, Md.	30	46
Raleigh, N. C.	30	36
Ft. Worth Area, Tex.	28	33
Louisville Area, Ky. & Ind.	27	47
Tampa and Port Tampa, Fla.	26	37
New Orleans Area, La.	26	34
Chattanooga Area, Tenn.	25	32
Beaumont-Port Arthur Area, Texas	24	35
Roanoke Area, Va.	23	29
Asheville, N. C.	21	40
Montgomery, Ala.	21	26
Houston Area, Tex.	19	37
Waco, Tex.	19	29
Baton Rouge Area, La.	16	24
Jacksonville Area, Fla.	15	49

These Census Bureau surveys further showed that there is less unoccupied space available for Negroes than for whites. Thus, in the Washington, D. C. Metropolitan Area the gross vacancy rate for privately financed dwelling units is 1% for dwellings last occupied by whites and 0.4% for dwellings last occupied by Negroes. Table 3 shows the racial differences in a number of cities:

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[10] Many of these unoccupied dwellings are not habitable. The Census Bureau criterion of habitable units in these surveys of veterans housing was: "Units in good condition or in need of only minor repairs and those in need of major repairs which were in no worse condition than similar occupied units in the same neighborhood." Because of the generally less adequate dwellings in Negro areas than in white, the standard of habitability for Negro dwellings usually is lower than for white dwellings. Hence there is an even greater disparity between Negro and white dwellings than appears from Table 3, reflecting the meanness of a dwelling in a Negro neighborhood which remains unoccupied for any length of time.

TABLE 3. PERCENTAGE OF VACANCIES IN ALL PRIVATELY FINANCED DWELLING UNITS[10]

	WHITE	NEGRO
Washington, D.C., Metropolitan District	1.0	0.4
Baltimore, Md.	2.0	1.3
Baton Rouge Area, La.	2.0	1.1
Tampa and Port Tampa, Fla.*	2.0	0.9
New Orleans Area, La.*	2.3	0.5
Austin, Tex.	1.6	0.8
Shreveport Area, La.	1.2	0.6
Waco, Tex.	1.1	0.8
Jacksonville Area, Fla.	1.0	0.6
Jackson, Miss.	0.6	0.4
Charlotte, N. C.	0.6	0.3
Columbia Area, S. C.	0.6	0.2
Chattanooga Area, Tenn.	0.5	0.3

* Non-seasonal dwellings only

The American Veterans Committee has repeatedly called attention to the substandard housing of Negro veterans. Illustrative is the recent article of the then Chairman of AVC in the *Survey Graphic* in which he said:[11]

> "A survey recently made by the Bureau of the Census in Macon, Ga., underscores the plight of Negro veterans in securing decent housing. Whereas 33 percent of the white veterans in Macon are 'doubled up' or inadequately housed, 44 percent of the Negro veterans are living with in-laws or in hovels. There are half again as many vacancies in white neighborhoods as in Negro. . . . Over 30 percent of all Negro veterans are living in substandard, unhealthy rooms, as compared with 11 percent of the white veterans. Over 50 percent of all Negro veterans' dwellings lack one or more of the standard facilities—bath, toilet, running water, electric light."

[11] Charles G. Bolte, "He Fought for Freedom," 36 *Survey Graphic* 69, 71 (January, 1947); see also Charles G. Bolte and Louis Harris, "Our Negro Veterans" (Public Affairs pamphlet No. 128) (March, 1947).

III. The Judicial Enforcement of Racial Restrictive Covenants Would Prevent the Successful Rehabilitation of Negro Veterans With Respect to Their Housing, And Thereby Frustrate the Non-Discriminatory Federal Veterans Legislation.

In most of the major cities of the Nation, racial restrictive covenants now cover a large percentage of all newly constructed dwellings, new residential subdivisions, and existing residential properties contiguous to areas occupied by Negroes.[12] In Washington, D. C., for example, the American Veterans Committee, after months of unremitting search for a satisfactory site open to all of its veteran members regardless of race, creed or color, was forced by the widespread existence of restrictive covenants to abandon its plans to build a housing project in the District.[13]

This pervasive coverage of residential land by restrictive covenants substantially impedes the opportunities of Negro veterans to improve their deplorable housing situation.

It renders illusory for them the preference provisions of the Veterans' Emergency Housing Act.

Similarly, it prevents most Negro veterans from obtaining the loan guarantee benefits of the G. I. Bill of Rights. Before the Government can guarantee a home loan, the veteran must obtain the loan from a private lending institution or person. But lenders will not risk loans, for the purchase of property subject to a restrictive covenant, to a member of the group against whom the restriction is aimed. This is true even with respect to a covenanted house

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[12] Illustrative is the recent survey of 315 subdivisions opened in the last 10 years in Queens, Nassau and Southern Westchester (New York), revealing that well over 50% of the dwellings were covered by racial restrictive covenants against Negroes. John P. Dean, "None Other than Caucasian," *Architectural Forum*, p. 16 (October, 1947). The wide extent of racial covenanting was discussed in the Report of the President's Committee on Civil Rights, To Secure These Rights," at pp. 68-69 (1947).

[13] *The Capital Veteran*, Vol. 2, No. 5, p. 2 (October, 1947) (newspaper of American Veterans Committee, Washington, D. C.).

in a neighborhood which long ago changed to Negro ownership and occupancy. A non-veteran Negro can often finance the purchase of such a house through a "straw" white person who takes title, signs the mortgage and trust note, and then deeds the property and assigns the trust note to the Negro purchaser. But the Negro veteran who seeks a loan guarantee under the G. I. Bill of Rights is required to sign the mortgage and trust note personally. Since the title company will not clear the title *according to the records*, the lending institution will refuse to loan to the Negro veteran. Furthermore, even if the Negro veteran should find a house unencumbered by a restrictive covenant, the Veterans Administration will not guarantee a loan under the G. I. Bill of Rights if the price of the property exceeds its "reasonable value as determined by proper appraisal." Sec. 501 (38 U. S. C. 694a.) But because of the great excess of demand for Negro housing over supply, largely attributable to restrictive covenants, Negroes are forced to pay much more than whites for such uncovenanted property. These inflated prices may, and often do, prevent approval of the loan guarantee.

These conditions are not temporary. Although the vitality of the American productive system will, in time, alleviate the worst of the housing hardships of white families, the prospect of such improvement for Negro families will remain dim so long as racial restrictive covenants are judicially enforced. The widespread pattern of covenants will continue to hem Negro veterans into overcrowded and substandard housing in slums and blighted areas. Long after white veterans have become rehabilitated in civilian life, the Negro veterans will be plagued by the problems aggravated for them by their service in the armed forces. The Negro veteran will, in fact, thus be almost entirely deprived of the benefits which the Federal veterans legislation made available to him, since the Veterans'

Emergency Housing Act expires on December 31, 1947 [14] and the home loan benefits under the G. I. Bill of Rights will not be obtainable after July 25, 1957.[15]

Conclusion

We respectfully urge that racial restrictive covenants should not be enforced by the courts (1) for the reasons set forth in the briefs of the petitioners in these four cases and (2) because such enforcement frustrates the non-discriminatory Federal veterans legislation with respect to Negro, as well as other, veterans.[16]

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[14] Section 1(b) of the Veterans' Emergency Housing Act of May 22, 1946 (60 Stat. 207, 208).

[15] Act of July 25, 1947 (Public Law 239, 80th Cong., sec. 3, slip copy p. 6); see H. Rept. 799, 80th Cong., 1st sess., p. 34, item 156 (July 7, 1947).

[16] In at least two of the racial restrictive covenant cases now pending before this Court, the persons threatened with eviction from their homes by court injunction, solely because of their ancestry, are veterans decorated for overseas service in the armed forces of the United States. *Amer* v. *Superior Court of Calif.* (No. 429, Oct. Term, 1947) and *Kim* v. *Superior Court of Calif.* (No. 430, Oct. Term, 1947). Veterans Amer and Kim are United States citizens, of Chinese and Korean ancestry, respectively.